

Message Text

CONFIDENTIAL

PAGE 01 MANILA 03129 200136 Z

67

ACTION EA-14

INFO OCT-01 ADP-00 CIAE-00 PM-09 H-02 INR-09 L-03 NSAE-00

NSC-10 PA-03 RSC-01 PRS-01 SS-14 USIA-12 JUSE-00 SY-07

EB-11 RSR-01 /098 W

----- 095171

R 190820 Z MAR 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3869

INFO SECDEF

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

CG 13 TH AF

C O N F I D E N T I A L MANILA 3129

CINCPAC FOR POLAD

E. O. 11652 : GDS

TAGS: MARR, RP

SUBJECT: 1971-72 MBA WORKING GROUP TALKS: REVIEW OF STATUS
OF NON- AGREED ARTICLES: ARTICLE XIII(CRIMINAL JURISDICTION)

REFS: (A) STATE 137117 DTG 282251 Z JULY 1971

(B) MANILA 7134 DTG 291019 Z JULY 1971

(C) MANILA 8813 DTG 180516 Z SEPT 1971

(D) STATE 188515 DTG 142051 Z OCT 1971

(E) MANILA 9663 DTG 150946 Z OCT 1971

(F) MANILA 10210 DTG 030929 Z NOV 1971

(G) MANILA 11053 DTG 010901 Z DEC 1971

(H) STATE 219664 DTG 061934 Z DEC 1971

(I) MANILA 11409 DTG 130848 Z DEC 1971

(J) STATE 224871 DTG 142241 Z DEC 1971

(K) MANILA 1926 DTG 020907 Z MAR 1971

(L) MANILA 3122 DTG 190724 Z MAR 1973

1. EMBASSY NOTED ITS UNDERSTANDING THAT STATE/ DEFENSE

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANILA 03129 200136 Z

WERE AGREED TO MODIFICATION OF ART. XIII IN REF K,
EXCEPT FOR PARA 1 (B) (INTER SE) AND PARA 1 (C)
(OFFICIAL DUTY DETERMINATION).

2. REF D STATES THAT USG POSITION ON PARA 1 (B) (REF A)
IS THAT WE WILL CONSIDER GIVING PHILS PRIMARY RIGHT TO EXERCISE
JURISDICTION IN INTER SE CASES INVOLVING CERTAIN OFFENSES
SOLELY AGAINST PERSONS OR PROPERTY OF DEPENDENTS WHO ARE
PHILIPPINE NATIONALS AND NOT US NATIONALS OR ORDINARILY
RESIDENT IN US, PROVIDED: (A) ALL DRAFTING PROBLEMS ARE
RESOLVED, INCLUDING CLARIFICATION THAT SUCH A PROVISION
WOULD NOT AFFECT US JURISDICTION UNDER SUB- PARAGRAPH 1
(C) IN OFFICIAL DUTY CASES; (B) AND, FURTHER, ONLY IN
THE CONTEXT OF A SATISFACTORY RESOLUTION OF ALL REMAINING
CRIMINAL JURISDICTION ISSUES.

3. RECORD AS SET FORTH IN REFS WOULD SEEM TO INDICATE
THAT SOME DRAFTING PROBLEMS STILL REMAIN RE PARA 1 (B)
AS TO THE DEFINITION OF SERIOUS OFFENSE. ALSO RECENT EMBASSY
EXPERIENCE INDICATES THAT AN AGREED
MINUTE OR OTHER CLARIFICATION NEEDS TO BE DEVELOPED TO
MAKE IT CLEAR THAT PHIL INTERNAL CRIMINAL LAW DOES NOT CONTROL
THE DEFINITION OF INTER SE CASES. THIS ISSUE NEEDS ATTENTION
BEFORE US AGREES TO SUCH EXTENSION OF PHIL JURISDICTION.

4. ISSUE OF FINAL DETERMINATION OF OFFICIAL DUTY IS
ONLY OTHER OUTSTANDING AND NON- AGREED ASPECT OF ARTICLE
XIII AS CONSIDERED BY ORIGINAL WORKING GROUP. US POSITION
NOT SUSCEPTIBLE TO CHANGE; PHIL POSITION WAS PREVIOUSLY
ALSO CAST IN CONCRETE TO EFFECT
THAT SECRETARY OF JUSTICE SHOULD HAVE FINAL SAY IN
OFFICIAL DUTY DETERMINATIONS, AS WAS CASE FROM 1947-1965.
IT EMBASSY JUDGMENT THAT CHANGE IN POLITICAL ATMOSPHERE
THAT HAS OCCURRED SINCE MARTIAL LAW DECLARATION AND
APPARENT CONFIDENCE OF SECRETARY OF JUSTICE ABAD SANTOS
IN INTEGRITY US DUTY DETERMINATIONS MAY HAVE MADE THIS
ISSUE LESS IMPORTANT FOR NEXT STAGE OF NEGOTIATION. IN
ANY CASE, THOUGH, PHILS VERY AWARE THERE NO GIVE IN US
POSITION ON THIS ISSUE, US SHOULD EXPECT PROLONGED FIGHT
ON DUTY DETERMINATION QUESTION IN RESUMED NEGOTIATION
BEFORE REACHING AGREEMENT WITH PHILS. OUR BEST HOPE FOR
REACHING AGREEMENT IS FACT THAT KEY PHIL NEGOTIATORS HAVE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 MANILA 03129 200136 Z

MADE THEMSELVES FAMILIAR WITH US SOFA' S ELSEWHERE AND ARE

NOW MORE FAMILIAR WITH ANOMALOUS PHIL POSITION OF INSISTING THAT SECRETARY OF JUSTICE MAKE DUTY DETERMINATIONS. THIS DOES NOT NEGATE THE FACT, HOWEVER, THAT THIS AN EMOTIONAL ISSUE FOR PHILS (SMITH AND MOOMEY CASES), AND EMBASSY BELIEVES PHIL NEGOTIATORS WILL PERSIST STUBBORNLY IN EFFORT TO REGAIN FINAL SAY IN DUTY DETERMINATION FOR SECRETARY OF JUSTICE. HOWEVER, EXPLICIT TRADE- OFF BETWEEN PARA 1(B) AND 1 (C) WHICH POSSIBLE, COUPLED WITH ABOVE- NOTED CHANGE IN POLITICAL ATMOSPHERE AND PROMISING START OF CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE, MAY MAKE PHIL APPROACH ON THIS ISSUE PRO FORMA RATHER THAN DO OR DIE.

5. ONE NEW CLAUSE WHICH WASHINGTON MAY WISH TO CONSIDER IN LIGHT OF MARTIAL LAW IS WHETHER SOME TYPE OF SAFEGUARD PROVISION SHOULD BE INCLUDED CONCERNING JURISDICTION WHEN MARTIAL LAW HAS BEEN DECLARED. EMBASSY DOES NOT BELIEVE IT NECESSARY NOR WOULD WE FAVOR A STRONG CLAUSE SUCH AS FOUND IN THE KOREAN SOFA (AGREED OFFICIAL MINUTES TO ART XVIII RE PARA 1 (B)) WHICH SUSPENDS THE CRIMINAL PROVISIONS OF SOFA DURING MARTIAL LAW AND GIVES U. S. EXCLUSIVE JURISDICTION. HOWEVER, SOME TYPE OF WORDING MAY BE APPROPRIATE TO INSURE THAT MBA PERSONNEL WOULD ONLY BE TRIED BY REGULAR CONSTITUTED CIVILIAN COURTS UNDER MARTIAL LAW REGIMES AND ONLY IF SUCH COURTS ARE NO LONGER FUNCTIONING WOULD THE CRIMINAL JURISDICTION PROVISION BE SUSPENDED AND U. S. GIVEN EXCLUSIVE JURISDICTION OVER MBA PERSONNEL. IT SHOULD BE STRESSED THAT UNDER PRESENT MARTIAL LAW REGIME WE FORESEE NO REAL DIFFICULTY IN LIGHT OF THE PHILS COOPERATION (SEE MANILA 10200, 1972 SERIES, THAT REPORTS PHIL AMENDED MARTIAL LAW GENERAL ORDER TO INSURE CIVILIAN COURT JURISDICTION OVER MBA PERSONNEL EXCEPT FOR OFFENSES OF SUBVERSION, REBELLION, SEDITION), BUT THIS COULD CHANGE WITH A DIFFERENT REGIME OR A TURN IN US/ RP RELATIONS. ALSO SUCH A CLAUSE MAY BE HELPFUL IN RELATION TO ANY CONSULTATION WITH THE U. S. SENATE THAT MAY BE NECESSARY. REQUEST WASHINGTON EVALUATION.
BYROADE

CONFIDENTIAL

*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 19 MAR 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: thigpegh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973MANILA03129
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: RR
Errors: n/a
Film Number: n/a
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730338/aaaaihrn.tel
Line Count: 157
Locator: TEXT ON-LINE
Office: ACTION EAP
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 73 STATE 137117 DTG 282251 Z JULY, 73 MANILA 7134 DTG 291019 Z JULY 1, 73 MANILA 8813 DTG 180516 Z SEPT 1, 73 STATE 188515 DTG 142051 Z OCT 1, 73 MANILA 9663 DTG 150946 Z OCT 19, 73 MANILA 10210 DTG 030929 Z NOV 1
Review Action: RELEASED, APPROVED
Review Authority: thigpegh
Review Comment: n/a
Review Content Flags:
Review Date: 03 DEC 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03-Dec-2001 by shawdg>; APPROVED <14-Dec-2001 by thigpegh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> wfs 971229
Subject: 1971-72 MBA WORKING GROUP TALKS: REVIEW OF STATUS OF NON- AGREED ARTICLES: ARTICLE XIII(CRIMINAL JURISDICTION)
TAGS: MARR, RP
To: CG 13 TH AF
CINCPAC
CINCPACAF
CINCPACFLT
CINCPACREPPHIL

EA

SECSTATE WASHDC

Type: TE

Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005